## GAN KEE CHEOW trading as MOH SENG CO. v. PETER & WILLIAM CO. (PTE.) LTD.

[O.C.J. (Lai Kew Chai J.) September 21, 1982]

[Singapore – Suit No. 1178 of 1978]

*Sale of Goods – Contracts for sale of logs – F.O.B. – C.I.F. – Duties of buyers and sellers – Opening Letters of Credit – Nomination of ships.*

The plaintiff claimed against the defendants damages for breach of two contracts of sale of logs, one made in 1976 and the other in 1977 and supplemental agreements thereto. He claimed a sum of $95,994.20 being the aggregate differences between the contracted prices and the prices of the logs which the plaintiff had resold to third parties. The High Court found as a fact that the plaintiff had sufficient logs for delivery in both transactions.

The plaintiff contended: First, by failing to provide the vessel to take delivery under an F.O.B. contract, the defendants were in breach of the first contract. Secondly, by failing to open L/C or amend the L/C for the balance of goods under the C.I.F. contract, the defendants were in breach of the second contract.

**Held**: (1) the defendants under the 1976 agreement were obliged to nominate and send a vessel to load the logs;

(2) it was the duty of the defendants under the 1977 agreement to open the second Letter of Credit.

**Editorial note**: The judgment of Lai Kew Chai J. in this case was affirmed by the Court of Appeal (Wee Chong Jin C.J., Kulasekaram and Rajah JJ.) in Civil Appeal No. 61 of 1982, on April 18, 1983. The Honourable the Chief Justice in an oral judgment held:

(1) that under an F.O.B. contract, as the buyer had failed to procure or nominate a vessel, he was not entitled to raise the question whether the seller had the goods for delivery and he was in breach of the contract in law;

(2) that under a C.I.F. contract, as the buyer had failed to open or establish a letter of credit before the stipulated date, he was not entitled to question whether the seller had goods for delivery, and he was in breach of the contract in law;

(3) that the seller might not have the goods to delivery in the circumstances is not a good defence for the plaintiff's claim.

[The following cases were cited in argument:

*Maine Spinning Co.* v. *Sutcliffe & Co.* (1918) 34 T.L.R. 154; *H.O. Brandt & Co.* v. *H.N. Morris & Co. Ltd.* [1917] 2 K.B. 784. 795; *John Gillanders Inglis* v. *William Ravenhill Stock* (1884-5) 10 App. Cas. 263, 271; *David T. Boyd & Co. Ltd.* v. *Louis Louca* [1973] 1 Lloyd's Rep. 209, 213; *Pavia & Co. SPA* v. *Thurmann-Nielsen* [1952] 2 Q.B. 84, 88; *Ian Stach Ltd.* v. *Baker Bosley Ltd.* [1958] 2 Q.B. 130, 142.]

CIVIL SUIT.

*Cheng Tim Pin* for the plaintiff.
*Lee Tow Kiat* for the defendants.

*Cur. Adv. Vult.*

**Lai Kew Chai J.**: In this case the Plaintiff as seller of logs claim against the Defendants, the buyers, damages for breaches of two contracts of sale, one made in early 1976 and the other in early 1977, and supplemental agreements thereto. He claims in total $95,994.20 being the aggregate difference between the contracted prices and the prices of the logs which the defendants failed to take delivery and which the Plaintiff had re-sold to third parties.

The Defendants assert that the Plaintiff had short-delivered and counter-claimed the aggregate sum of $94,066.78 for loss of profits on the ground that the Plaintiff had no logs to supply.

The facts I found on the contemporaneous documents and the oral evidence are these.

By a written agreement dated March 19, 1976 ("the 76 Agreement") the Plaintiff agreed to sell and the Defendants agreed to buy 2,500 $m^3$ of Liew Aun logs of Sumatra on F.O.B. terms. For logs above the SQ grade (i.e. Superior quality) exceeding 60 cm in diameter and above 6 metres in length, the agreed price was US$37 per $m^3$ F.O.B. In respect of Swampy Mixed and low sawmill quality logs, not exceeding 15% to 20% of the contracted volume, the agreed price was US$33 per $m^3$ F.O.B. Port of loading was Tanjong Beranak, Sumatra. The shipment date was April 1976. The Defendant agreed to open irrevocable letters of credit.

Following the Defendants' inspection of the logs, they opened the letter of credit in March 1976. Before the Defendants nominated and sent a vessel to load, as they were obliged to do; the parties signed an agreement supplemental to the 1976 agreement ("the 76 supplemental agreement"). Under it, it was agreed, *inter alia*, that the shipment date of the 76 Agreement was extended. In addition, the Plaintiff agreed to sell and the Defendants agreed to buy a further volume of 1,200 $m^3$ to 1,500 $m^3$ of Lew Aun logs. The prices for the two grades of logs which I have stated earlier were increased per $m^3$ to US$40 and US$36 respectively.

In June 1976 the Defendants provided a tug and barge to carry the logs. It had a carrying capacity of only 900 $m^3$, with the master of the tug having the option to load plus or minus 10%. The Defendants had agreed with the carriers that the master could shut out cargo. In the event, only 844.79 $m^3$ of logs were loaded. The rest of the logs were shut out.

The Defendants failed to provide another vessel to load the lot of 2,500 $m^3$ under the 76 Agreement and the balance of 355.21 $m^3$ under the 76 supplemental agreement. They alleged the Plaintiff had no logs of the type agreed. Tan Kim Joo, DW3, a log grader, said the visited the logging concession which the Plaintiff was working. He saw only a small quantity of logs. I was unable to accept his evidence. He was too anxious to help the Defendants. On the other hand, the Plaintiff proved that he had the logs and had resold them to a Taiwanese buyer in July 1976. The packing lists for these logs were couched in general terms for tax reasons at the place of export as the Plaintiff explained, which explanation I accept.

In support of the Defendants' allegation that the Plaintiff had no logs, DW1 produced a copy of a letter dated April 26, 1976 which he alleged he had sent to the Plaintiff. The letter, marked DAB2A, purported to refer to a meeting and to record that the Defendants could face problems in the production of the logs. Apart from this embellishment, the rest of the letter was an unnecessary letter as AB5, the 76 supplemental agreement, had recorded all the terms thereof. I am satisfied that the letter was concocted by the Defendants to serve the interest of the Defendants in these proceedings. It also referred to a meeting with the Plaintiff "yesterday" which was a Sunday, a day of rest. DW1, Tho Kee Ping's explanation that he had wrongly dated the letter was unacceptable to me. He was not a witness of truth. So the Defendants' counterclaim fails.

I now turn to the second transaction. On February 3, 1977 the Defendants agreed ("the 77 Agreement") to buy from the Plaintiff 3,600 $m^3$ of logs with a 10% variation. Delivery was to be by two shipments to be effected from March to April. Each shipment was therefore intended to be about 1,800 $m^3$. The sale was on C.I.F. terms. Payment was to be by letters of credit to be opened by the Defendants.

On March 11, 1977 the Defendants opened a letter of credit in favour of the Plaintiff for S$185,000 to pay for a shipment of 1,800 $m^3$.

Again the parties entered into an agreement ("the 77 supplemental agreement") supplemental to the 77 Agreement. Under it the shipment was increased by 300 $m^3$ of logs to 2,100 $m^3$. Ramin logs were included.

In April the Plaintiff arranged the tug boat "Wallet" and the barge "Putri Sejati" to load one of the shipments. As the barge's carrying capacity was 2,000 $m^3$, the Plaintiff requested the Defendants to increase the volume and amount of the credit in the letter of credit. The Defendants increased the quantity but not the credit amount. Only 1,200 pieces were loaded. When the logs arrived in Singapore on April 23, 1977 a dispute as to the measurement of the logs arose between the Plaintiff and the Defendants. The Defendants alleged that the Plaintiff then repudiated the agreements, indicating that he was not delivering the balance of the quantities under the 77 Agreement and the 77 supplemental agreement.

Now, it was the duty of the Defendants to open a second letter of credit. They never did. They again say that the Plaintiff had no logs and had, in any case, wrongfully repudiated the agreements. I reject both these defences. In fact, the Plaintiff had the logs which he resold to another party. The Plaintiff also should have judgment in respect of the transactions in 1977.

The damages suffered by the Plaintiff were not seriously challenged. They were documented and I need not say anything further.

Accordingly, I give judgment for the Plaintiff in the sum of $95,994.20 with costs.

*Order accordingly.*

Solicitors: *Yap & Yap; Lee & Cheong.*